IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Shrawan Kumar. Versus State of Rajasthan.

S.B. Criminal Misc. Bail Application No.1092/2006

and

Deva Ram. Versus State of Rajasthan.

S.B. Criminal Misc. Bail Application No.1037/2006

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Date of Order: June 02, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. M.L. Bishnoi, for petitioner Shrawan Kumar.
Mr. Yogesh Verma, for petitioner Deva Ram.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

By both these bail applications, the petitioners have assailed the orders dated 3-3-2006 passed by the Special Judge, NDPS Cases, Jodhpur (for short, "the trial Court" hereinafter) in Criminal Misc. Cases No. 60/2006 and 58/2006 respectively, whereby the trial Court dismissed the bail applications filed by

both the petitioners under Section 439 read with Section 167 (2) of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter).

I have heard learned counsel for the petitioners and the Public Prosecutor for the State. Carefully gone through the impugned orders, as also the record of the trial Court.

It is contended by the learned counsel for the petitioners that the trial Court fell in error in remanding the petitioners to judicial custody after 180 days from their arrest since the police did not complete the investigation within 180 days from the date of arrest of the petitioners.

Learned Public Prosecutor submits that petitioner Shrawan Kumar was arrested on 4-9-2005 and petitioner Deva Ram was arrested on 5-9-2005 and Section 57 of the Code empowers the police officer to detain in custody a person arrested upto 24 hours from the time of arrest and thereafter to produce him before the Court for remand and, therefore, from the first order of remand, 180 days have not been completed when the police filed the Challan. Even otherwise, according to the learned Public Prosecutor, on 2-3-2006, an application was filed by the investigation officer before the trial Court seeking extension of time to complete the investigation and file Challan, which was allowed by the trial Court and, therefore, in exercise of the powers conferred by Proviso to sub-section (4) of Section

36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "the NDPS Act" hereinafter), the trial Court extended the period upto 3.3.2006 on the request made by the investigating officer and the Public Prosecutor showing the progress of investigation and specific reasons for the detention of the accused-petitioners beyond the period of 180 days, and, therefore, the remand/detention order passed by the trial Court is perfectly in accordance with law and the petitioners are not entitled for bail under proviso to sub-section (2) of Section 167 of the Code.

From the perusal of the record, it appears that the petitioners were produced before the trial Court on 5-9-2005 at 9:00 PM and, therefore, the initial remand order was passed on 5-9-2005 at 9:00 PM and the police completed the investigation and filed Challan against both the petitioners on 3-3-2006 at the opening hours of the Court, i.e. 10:30 AM. The period of remand in respect of accused-petitioner Shrawan Kumar comes to 180 days at 9:00 PM on 3.3.2006, whereas the investigation was completed and Challan against him was filed on 3-3-2006 at 10:30 AM. So also is in the case of accused-petitioner Deva Ram.

Even otherwise, under proviso to sub-section (4) of Section 36-A of the NDPS Act, the Special Court is competent to extend the said period of 180 days, which reads as under:-

"36A. Offences triable by Special Courts.-

(1)Notwithstanding anything contained in the Code of Criminal Procedure. 1973.-

....

(2)..... ....

(3)Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973, and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4)In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days.

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days."

In the instant case, on 2-3-2006, the Station House Officer, Police Station, Sadar, Pali, the investigating officer, through the Public Prosecutor, filed an application before the trial Court stating therein the progress of investigation and also stating that it is not possible to complete the investigation till

2.3.2006 and requested the trial Court to extend the said period by one day i.e. 3-3-2006. By an order dated 2-3-2006, the trial Court extended the period upto 3-3-2006 to complete the investigation and file the Challan. Within the extended period, the police completed the investigation and filed Challan against both the petitioners on 3-3-2006 at 10:30 AM. Therefore, firstly, the Challan has been filed within 180 days from the date of first remand and even otherwise, the period was extended, in exercise of the powers conferred in the Special Judge by proviso to sub-section (4) of Section 36-A of the N.D.P.S. Act and, therefore, in my view, the petitioners are not entitled for the benefit of proviso to sub-section (2) of Section 167 of the Code read with sub-sectin (4) of Section 36-A of the NDPS Act.

So far as merit of the case is concerned, both the petitioners were found transporting huge quantity of poppy straw in a vehicle bearing No.GJ.19-A-4635 and on being intercepted by the police, recovery of 191 kgs of poppy straw was made, which is commercial quantity. Therefore, keeping in view the provisions of Section 37 of the NDPS Act, the petitioners are not entitled for bail even on merit, as at this stage, it cannot be said that there are reasonable grounds for believing that the petitioners are not guilty of the offence under the NDPS Act and are not likely to commit any such offence while on bail. In the circumstances, therefore, no ground for bail is made out even on

merit.

The bail applications filed by both the petitioners are accordingly dismissed. The record of the trial Court be returned forthwith.

(H.R. PANWAR), J.

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